



UNITED STATES PATENT AND TRADEMARK OFFICE

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BC
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In re application of
Kazuo Saito et al.
Serial No. 09/899,107

Filed: July 6, 2001

For: FUEL CELL SEPARATOR, PROCESS FOR PRODUCTION
THEREOF, AND POLYMER ELECTROLYTE FUEL CELL

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:
: DECISION ON
: PETITION
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This is a decision on the PETITION under 37 CFR 1.181 filed on December 4, 2003 requesting that the Commissioner instruct the examiner to allow the above identified application.

Alternatively, it is requested that the Commissioner instruct the examiner to close prosecution on the merits under the practice provided for in *Ex parte Quayle* and MPEP 706.07(f). In further alternative, it is requested that the Commissioner withdraw the finality of the final Office action mailed on June 5, 2003 and issue a new non-final Office action identifying those grounds of rejection not yet overcome. The PETITION further requests a refund of all extension fees, all notice of appeal fees, all brief filing fees and every other fee of any kind, paid in the past or in the future, because of the apparent loss of the certified translation of a certain priority document timely filed in the PTO but apparently never matched with the official PTO file in the above identified application.

DECISION

While the Office attempts to promptly match incoming communications with the application file in a timely manner, there are those instances where delays do occur, as in the instant application. In the present application, once the certified translation of the foreign priority document was matched and entered into the official PTO application file, the examiner promptly withdrew the finality of the final Office action of June 5, 2003 and issued a non-final Office action on April 6, 2004 based on new prior art discovered during an expanded and updated search. Accordingly, the Petitioner's requests that the examiner be instructed to allow the above identified application or close prosecution can not be granted in view of the currently pending grounds of rejections set forth in the non-final Office action of April 6, 2004. Additionally, the request that a new non-final Office action be issued is now moot in view of the non-final Office action mailed on April 6, 2004.

The request for refund does not meet the requirements of 37 CFR 1.26 or MPEP 607.02. The applicants payment of extension of time fees and notice of appeal fee is deemed to be the diligence required to avoid abandonment of the application after a Final rejection is issued. Accordingly, the request for refund cannot be granted.

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This Petition is **DENIED**.

This application is currently awaiting a response from the applicants in reply to the non-final Office action mailed on April 6, 2004.



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